



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2022-0131]

RIN 1625-AA00

### Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is amending its safety zones established for recurring marine events and fireworks displays that take place within the Fifth Coast Guard District area of responsibility. This action is necessary to address minor revisions to the listing of events that informs the public of regularly scheduled fireworks displays that require additional safety measures provided by regulations. Through this final rule, the current list of recurring marine events requiring safety zones will be updated with two additional events that take place in the Sector Virginia area of responsibility. This regulation prohibits persons and vessels from being in the safety zones unless authorized by the Captain of the Port Virginia or a designated representative.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type Docket Number USCG-2022-0131 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Ashley Holm, Chief, Waterways Management Division, Sector Virginia, U.S. Coast Guard; telephone 757-668-5580 email Ashley.E.Holm@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
PATCOM	Patrol Commander
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard regularly updates the regulations for recurring safety zones within the Fifth Coast Guard District at 33 CFR 165.506, and its respective tables. These recurring safety zones are for fireworks displays that take place either on or over the navigable waters of the Fifth Coast Guard District as defined at 33 CFR 3.25. These regulations were last amended October 15, 2021 (86 FR 57358). Since then, two recurring marine events within the Fifth Coast Guard District have changed in a way that require establishment of a safety zone for protection of life, property and the environment. Hazards associated with these events include potential falling debris and possible fire, explosion, projectile, and burn hazards. The purpose of this rule is to ensure the safety of persons, vessels, and the navigable waters within close proximity to fireworks displays before, during, and after the scheduled events. In response, on March 20, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District (87 FR 15347). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these fireworks displays. During the comment period that ended April 19, 2022, we received one comment.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Virginia (COTP) has determined that potential hazards associated with the fireworks events present a safety concern for anyone within the safety zones. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received one comment on our NPRM published on March 20, 2022. The commenter was interested in understanding more about how these safety zones were developed, particularly how the Coast Guard determined how big each zone needs to be, where they are located, whether the Coast Guard regulates the types of fireworks used in the event, and environmental analysis. The Coast Guard creates safety zones under the authority in 46 U.S.C 70034. The Coast Guard carefully determines the appropriate size of the safety zone using the shell diameter as a referential factor and uses the National Vessel Inspection Circular (NVIC) No. 7-02, Marine Safety at Fireworks Displays, and the National Fire Protection Agency (NFPA) 1123, Code for Fireworks Display, to determine applicable size of the awarded safety zone using the established criteria. In general, fireworks shows are common occurrences both on land and on the waterway. The Coast Guard reviews each individual proposed waterborne event on a case-by-case basis. Marine event permit applications are submitted to the Coast Guard by sponsors of proposed marine events. They include a good faith estimate of spectator craft that are expected to be drawn to the event based on the “triggering event” itself. In each of the two safety zones proposed, the fireworks shows or “triggering events” are expected to draw a significant number of spectator craft based on historical precedent, general public interest and the best projections for attendance communicated to the Coast Guard via the marine event application process. Part of the marine event application

process is the National Environmental Protection Act (NEPA) consideration the Coast Guard completes for all federal actions taken. The issuance of a marine event permit constitutes a “federal action”, thus requiring the NEPA review to be completed. The NEPA review considers the proposed event location and evaluates the potential impact to environmentally sensitive areas that may need to be addressed and mitigated. The issuance of a rule creating the safety zone is a separate federal action. The fireworks events in this regulation are legacy events that were inadvertently removed due to administrative error when the Coast Guard revised 33 CFR 165.506, and its respective tables, in 2021. This regulatory action was taken to re-establish the two safety zones rather than establish them as new occurrences.

There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The first safety zone would be enforced on the third or fourth Saturday in July of each year, beginning in July 2022, between 9:30 p.m. and 10 p.m. and cover all waters of John H. Kerr Reservoir within a 400 yard radius of approximate position latitude 36°37'51" N., longitude 078°32'50" W., located near the center span of the State Route 15 Highway Bridge.

The second safety zone would be enforced on the evening of the first or second Saturday or Sunday in June of each year, beginning in June 2022, between 9:30 p.m. and 10 p.m. and cover all waters of the Elizabeth River within a 500-yard radius of approximate position of the fireworks barge at latitude 36°50'41" N., longitude 076°17'47" W., located near Town Point Park in Norfolk, VA.

Dates and times are subject to change in accordance with existing regulatory text found in 33 CFR 165.506(c) .

The duration of the zones are intended to ensure the safety of vessels and these navigable waters before, during, and after each scheduled fireworks display. No vessel or

person would be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the short amount of time that vessels will be restricted from certain parts of the waterway and the small size of these areas that are usually positioned away from high vessel traffic zones. Generally vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the regulated areas. Advance notifications will also be made to the local maritime community by issuance of Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and Marine Safety Information or Security Bulletins so mariners can adjust their plans accordingly. Notifications to the public for most events will typically be made by local newspapers, radio and TV stations. The Coast Guard anticipates that these safety zones will only be enforced for limited durations, less than 24 hours, occurring on specific dates throughout the year.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have

determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves 2 recurring safety zones lasting less than 1 hour each that will prohibit entry within. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 1.2.

2. In §165.506, amend table 3 to paragraph (h)(3) by adding entries 12 and 13 to read as follows:

**§ 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District.**

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(h) \* \* \*

(3) \* \* \*

TABLE 3 TO PARAGRAPH (h)(3)

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12	July—3rd or 4th Saturday	John H. Kerr Reservoir, Clarksville, VA; Safety Zone	All waters of John H. Kerr Reservoir within a 400-yard radius of approximate position latitude 36°37'51" N., longitude 078°32'50" W., located near the center span of the State Route 15 Highway Bridge.
13	June—first or second Saturday or Sunday	Elizabeth River, Town Point Reach, Norfolk, VA; Safety Zone	All waters of the Elizabeth River, Town Point Reach within a 500-yard radius of approximate position of the fireworks barge latitude 36°50'41" N., longitude 076°17'47" W., in vicinity of Town Point Park in Norfolk, VA.

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Dated: May 9, 2022.

L. M. DICKEY,  
Rear Admiral, U.S. Coast Guard,  
Commander, Fifth Coast Guard District.

[FR Doc. 2022-10345 Filed: 5/12/2022 8:45 am; Publication Date: 5/13/2022]